such vehicles. It is therefore apparent that, whether or not the violation of a speed law is deemed negligence *per se,* will depend upon the view which the courts of a particular jurisdiction have taken with respect to the violations of similar statutes and ordinances, and such decisions as there are in point, support this view.[10]

There is, however, an exception to the general rule which should be noted. It is agreed in practically all of the recent decisions that the violation of a statute requiring all persons driving along the highway to keep to the right, is not negligence *per se,* if the offender can show that what he did was a necessary choice of hazards in an emergency. But unless he can establish that fact affirmatively, the usual rule applies.[11]

E. L. H.

PROPERTY—WILLS—CONSTRUCTION OF WORD "ISSUE" IN BEQUESTS—The construction of the word "issue" can hardly be said to raise a novel question at this time, but it is one that the courts are called on to answer daily. The difficulty lies in the fact, that the word in the abstract embodies two meanings—a vulgar and a legal one. In the former sense it is commonly used to denote immediate offspring; in the latter, it may include lineal descendants beyond the first generation.[1] This latter idea of the word had its origin in the necessity of so taking it in connection with devises of real estate to one for life, then to the issue, in order to make it a word of limitation rather than one of purchase.[2] The legal meaning was then applied to the word regardless of the character of the property, in the absence of controlling words to the contrary in the will itself.[3] But in cases relating to personal property, the English courts began, early in the nineteenth century, to show a tendency to break away from the stricter rule if possible; and to do this they naturally resorted to the expedient of limiting the word "issue" by other words used in connection with it by the testator—in short, to decide as nearly as possible, what was the intention of the testator in that particular instance. The landmark

[10] Schell v. Du Bois, *supra,* note 5. See also Thompson's Commentaries on Negligence, Vols. 1 and 8, Sec. 10.

[11] Borg v. Larson, 111 N. E. 210 (Ind. 1915); Johnson v. Heitman, 88 Wash. 595 (1915).

[1] Hawkshead, Operation in Wills of the word "issue," p. 417.

[2] Roe v. Grew, 2 Wils. 322 (Eng. 1767); Jesson v. Wright, 2 Bligh 1 (Eng. 1820).

[3] In Jesson v. Wright, *supra,* Lord Redesdale says: "The rule is, that technical words shall have their legal effect, unless, from subsequent inconsistent words, it is very clear that the testator meant otherwise."

in this line of cases is *Sibley* v. *Perry*,[4] where the word was used in connection with "parent," and the court restricted it to the vulgar meaning.[5] Despite this seeming predilection that grew up, for restricting the import to "children,"[6] there is little doubt that *prima facie* it is generally held to be synonymous with "descendants."[7] This construction of the word has not gone unchallenged, however, and in America, especially, there seems to be some little tendency to adopt wholly the common interpretation of the word when applied to personalty. So great an authority as Chancellor Kent,[8] seems to have looked with disfavor on the legal definition; and cases which have referred to his opinion, have laid even greater emphasis on his views than their exposition in his Commentaries seem to warrant. Indeed, in New York, it was at one time expressly stated that "issue" ordinarily was to be considered coterminous with "children."[9] The importance of the cases taking this view, is practically negatived, however, by the fact that a slightly earlier case [10] in the Court of Appeal of that State, recognized the English rule, and was misinterpreted by the later cases.

Aside from the difficulties based on the two meanings of "issue," there are several instances where its use raises a further question as to what persons are included. As in the case of a reference to "children," "issue" *prima facie* means "legitimate

[4] 7 Ves. Jr. 522 (Eng. 1802).

[5] Lord Eldon, in Sibley v. Perry, *supra,* laid the foundation for the rule that where the parent of an issue is spoken of, the *prima facie* meaning of "issue" becomes restricted to "children." This doctrine was strengthened by the later case of Pruen v. Osborne, 11 Sim. 132 (Eng. 1840)—in fact, the latter is often treated as the better authority.

[6] This is well illustrated in a recent English case—*Re* Timson, 115 LAW TIMES 55 (1916). There an income was left to A for life, and on his death to his children; if he had none, it was to be divided among five other nephews and nieces of the testator, and if any or all of them should have died in the lifetime of A, *"leaving lawful issue,* then such issue shall take the share or shares which his, her or their *parents* would have taken." A had no children, and it became necessary for the court to construe "issue." It was held that it was so closely connected with *"parents"* as to be restricted to the common meaning of "children." Yet, as far as the logic of allowing one word thus to change the meaning of another, a comparatively recent American case, Jackson v. Jackson, 153 Mass. 374 (1891), in holding to the legal definition, intimated that there was no more reason for allowing "parents" to change the meaning of "issue" than the reverse.

[7] Davenport v. Hanbury, 3 Ves. Jr. 257 (Eng. 1796); Ross v. Ross, 20 Beav. 645 (Eng. 1855); *Re* Embury, 109 LAW TIMES 511 (Eng. 1913); Appeal of Miller, 52 Pa. 113 (1866); Pearce v. Rickard, 18 R. I. 142 (1893); 2 Jarman, Wills (6th Ed.), p. 1590; 2 Redfield, Wills (2d Ed.), p. 355 *et seq.*; Ward, Legacies, p. 107; 1 Williams, Executors (10th Ed.), p. 870.

[8] 4 Kent, Commentaries, p. 278n.

[9] Murray v. Bronson, 1 Dem. Sur. 217 (N. Y. 1883); Taft v. Taft, 3 Dem. Sur. 86 (N. Y. 1885).

[10] Palmer v. Horn, 84 N. Y. 516 (1881).

issue." [11] But the children of a legitimatized daughter of a legatee, have been allowed to take under the description of "lawful issue" of that legatee [12]—thus departing from the *prima facie* meaning as to legitimacy, and holding to it as to general scope. Another point on which there is a distinct split of authority, is whether or not "issue" includes an adopted child. By a logical analysis of the common meaning of "issue" as offspring, an adopted child could not come under such a description.[13] But when one considers that by adoption a child is enabled to inherit, by reason of statutory wording, the courts taking the opposite view, seem to hold a sounder, and, on the whole, a more just position.[14] Perhaps the most interesting phase of the general topic, is centered on this point: Who is included by the words "male issue"? The question can only arise when the person attempting to qualify under that description, is in at least the second generation from the testator. Does it include a son of the testator's daughter, or must the descent be by the male line throughout? The probable weight of authority [15] seems to favor the latter view through analogy to such a restriction in real estate. The reasoning of the opposite view, however, is more logical. A daughter's son certainly fits in with the words used to the fullest extent; there is no need for restricting to the male line as was often the case with realty in early times; and, when relating to personalty, the words are generally used as words of purchase.[16]

Not the least of the difficulties raised by this word, occurs when it is used more than once in a will. Sometimes there will be such a connection that there can be no doubt that it has the same meaning throughout. But where there are a number of separate clauses, it is a different matter. It is now generally admitted, however, that if used in what the court considers its vulgar sense, in all but one clause, and in that one it does not *clearly* appear which meaning it has, then it must be given the meaning of "children" in all the clauses.[17] Indeed some authorities go so far as to hold that

[11] Cartwright v. Vawdry 5 Ves. Jr. 530 (Eng. 1800); Gibson v. McNeely, 11 Ohio St. 131 (1860); Flora v. Anderson, 67 Fed. 182 (1895).

[12] Appeal of Miller, *supra.*

[13] N. Y. Life Ins. Co. v. Viele, 161 N. Y. 11 (1899).

[14] Johnson's Appeal, 88 Pa. 346 (1879); Hartwell v. Tefft, 19 R. I. 644 (1896).

[15] Lywood v. Kimber, 29 Beav. 38 (Eng. 1860); Hawkins, Wills (2d Ed.), p. 211; Theobald, Wills (5th Ed.), p. 302.

[16] Wistar v. Scott, 105 Pa. 200 (1884); Wistar v. Gillilan, 4 Atl. 815 (Pa. 1886); Beckman v. De Saussure, 9 S. Car. 531 (1856); 2 Jarman, Wills (6th Am. Ed.), p. 913*.

[17] *Re* Birks, L. R. 1 Ch. Div. 417 (Eng. 1900); Duckett's Estate, 214 Pa. 362 (1906).

[18] Ridgeway v. Munkittrick, 1 Dr. & War. 84 (Eng. 1841); 1 Williams, Executors (10th Ed.), p. 835.

it must always have the same meaning throughout.[18] But this seems doubtful unless understood to include an exception when the testator puts in words strictly to the contrary.[19]

From this brief survey, some of the difficulties attendant on this word, can be appreciated. Whether the courts will ever wholly remove the difficulty by disregarding the legal meaning, when concerned with personalty, is doubtful. That they should do this seems to be the consensus of opinion to be gathered from the many cases where they have avoided the technical meaning by special interpretation. As the modern tendency of the law is to simplify legal proceedings as much as possible, this would be but a step in that direction—for to the person unacquainted with the law, "issue" connotes "children" rather than "descendants." One of the leading authorities on the Law of Wills,[20] thinks that the later English cases show a disposition to get away from the idea that "issue" is synonymous with "descendants"; and speaks with approbation of Chancellor Kent's view. But the double meaning has existed so long, that it is likely to continue until abolished by legislatures rather than by judicial interpretation.

R. T. B.

[19] *Re* Birks, *supra;* Theobald, Wills (5th Ed.), p. 292.
[20] 2 Redfield, Wills (2d Ed.), p. 358.